

SETTING ASIDE A DEFAULT JUDGMENT IN AN EVICTION CASE

Renters are required to show up (“appear”) at their eviction cases. If a renter doesn’t show up, the court will enter a default judgment against the renter if the landlord has followed all of the legal requirements for the eviction. If renters have a default judgment against them, the landlord can have the sheriff remove the renters. But if the default judgment got entered less than four days ago or the sheriff has not yet come to change the locks, there may still be time to ask the court to set aside the default judgment and reschedule the court date.

This packet contains all of the forms that renters need to ask the court to set aside a default judgment. All of the forms need to be filled out carefully. Renters should file the forms with the court as soon as possible. If a judgment has been entered, but has not been executed, there may be enough time to get the judgment set aside and a new court date scheduled.

This is not legal advice. This is general information that renters can use. If you want specific advice about your case, you will need to speak with an attorney. Renters can use the blank legal forms included with these instructions to file a motion with the court, but our office is not representing you in the case unless we have a specific agreement with you.

What am I asking the court to do?

The court may have entered a judgment against the renter because the renter didn’t show up or call in to the first appearance. But if the sheriff hasn’t shown up yet to change the locks there may still be time to ask the court to set aside that judgment and get a new court date. To do this, renters need to file what’s called a “motion to set aside the judgment.” This can also be called a “motion for relief from default.” Basically, the renter is asking the court to give them a do-over, because the renter had a good reason to miss the court date. The motion to set aside can also be used if the landlord did not meet the legal requirements for the eviction paperwork.

What are the requirements for the default?

The court is only allowed to default renters if the renter does not show up for first appearance *and* the eviction paperwork was correct. If the renter does not show up to court and the landlord does, the eviction paperwork still has to be correct. And the landlord must testify under oath or submit a declaration under penalty of perjury saying that, as far as they know, the renter is still living in the home.

What counts as a good reason for missing court?

Good reasons for missing a court date might include illness, being in the hospital, disability, lack of transportation, or technical difficulties calling in to the court. Not understanding the court papers because of a language barrier, learning disability, or other disability could also be good reasons. There’s no hard and fast rule, and it’s up to the judge to decide if a renter had a good reason for missing court.

What are other reasons for setting aside a default?

If the eviction paperwork is wrong, the court should not default the renter. If you believe that there's a legal problem with the landlord's eviction paperwork, that can be a reason to set aside the default. Or, if the landlord knew the renter had vacated the property by the court date, the renter can explain that in the request to set aside the default. **Renters should still include information on why they did not show for first appearance.**

What needs to go in the court paperwork?

Renters need to fill out all of the paperwork in the packet that's included with these instructions. That includes:

- **Motion to set aside:** renters need to fill in their name, the landlord's name, the case number, and sign the motion
- **Declaration in support:** renters need to fill in their name, the landlord's name, the case number, and explain:
 - why they missed the court date
 - if there is a legal problem with the landlord's eviction paperwork, and what the problem is
 - if the renter already moved out, the renter should explain when the renter moved out and how the landlord knew that the renter had moved out.Renters also need to sign and date the declaration. The declaration is under penalty of perjury, so renters need to be sure what they put in the declaration is true.
- **Answer:** renters need to fill out the answer to the eviction that they would have filed if they had made it to the court appearance. The answer doesn't need to be detailed, and can be amended (changed) later.
- **Certificate of service:** renters need to fill in the name and address of the landlord, and send them a copy of all the paperwork that gets filed with the court.

All of this paperwork needs to get filed with the court **on or before** the date that the renter is supposed to move out.

What happens next?

The court will review the paperwork and decide if the renter had a good reason to miss the court date. The court will do one of three things:

- **Set a hearing on the motion.** If the court sets a hearing, the renter will need to show up and explain why the renter missed the first appearance.
- **Grant the motion and set a new court date.** If the court grants the motion, the renter will get a notice about a new court date.
- **Deny the motion.** If the court denies the motion, the renter will have to move out.

No matter what the court decides to do, it is **extremely important** for renters to keep the court informed about how to reach the renter. Renters should keep their phone numbers and email addresses updated with the court, make sure that it's possible to leave voicemails, and make sure phones are charged. If a renter doesn't hear back from the court in a day or two after submitting the paperwork, it's a good idea for renters to call the court back and check.

What happens if the court grants the motion and reschedules the hearing?

If the court grants a motion to set aside the default judgment, it's like the judgment never happened. The case starts over with a new first appearance.

If renters want legal help on the eviction, they should contact the Eviction Defense Project right away at (888) 585-9638, or by email at evictiondefense@oregonlawcenter.org

If you would like to talk to an attorney about your rights, you can find contact information for a legal aid office near you at <https://oregonlawhelp.org/find-legal-help>

You can find more information about renters' rights, including information about the eviction process, at www.OregonRentersRights.org

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF _____

3 _____,
4 Plaintiff,
5 vs.
6 _____,
7 Defendant.

Case No. _____

DEFENDANT’S MOTION FOR
RELIEF FROM DEFAULT
JUDGMENT

ORCP 71

8
9 MOTION

10 Comes now Defendant _____, without an attorney, and moves the
11 court for an order setting aside the default judgment entered in this case. Defendant is
12 requesting relief from judgment and for the court to schedule a new first appearance in this
13 case. This motion is supported by the points and authorities below, and by the reasons
14 explained in the attached declaration.

15 POINTS AND AUTHORITIES

16 ORCP 71 A gives the court discretion to set aside a judgment based on the court’s
17 mistake.

18 ORCP 71B(1) gives the court discretion to set aside a default judgment for a party’s
19 mistakes, inadvertence, surprise or excusable neglect.
20

21
22 Signed: _____
(Name of Defendant)

23 Date: _____
24
25
26

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF _____

3 _____,
4 Plaintiff,
5 vs.
6 _____,
7 Defendant.

Case No. _____

DECLARATION IN SUPPORT OF
MOTION TO SET ASIDE
DEFAULT JUDGMENT

8 I, _____ (your name), declare:

- 9 1. I am a Defendant in the above matter and make this declaration based on my personal
- 10 knowledge.
- 11 2. My case was scheduled for a hearing on _____ (date and time
- 12 of hearing).
- 13 3. I was unable to attend the hearing due to the following circumstances:

14 _____
15 _____
16 _____

17 **Check box if these apply:**

18 I believe that the termination notice attached to the complaint was invalid. ORS
19 105.115(3); HB 2001 §63. The termination notice is legally defective because:

20 _____
21 _____
22 _____

23 I moved out of the dwelling before the first appearance in this case, and the landlord
24 was aware that I had moved. I moved out on _____ (date) and the
landlord knew that I had moved out because _____

25 _____
26 _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and subject to the penalty for perjury.

Signed: _____
(Name of Defendant)

Date: _____

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF _____

3 _____,
4 Plaintiff,
5 vs.
6 _____,
7 Defendant.

Case No. _____

EXHIBIT 1 (PROPOSED ANSWER)

8 I (we) deny that the Plaintiff(s) is (are) entitled to possession because:

9 ___ The landlord did not make repairs. List any repair problems:

10 _____

11 ___ The landlord is attempting to evict me (us) because of my (our) complaints (or the
12 eviction is otherwise retaliatory).

13 ___ The landlord is attempting to evict me because of my status as a victim of domestic
14 violence, sexual assault or stalking, or for other discriminatory reasons.

15 ___ The eviction notice is wrong.

List any other defenses:

16 _____

17 I (we) may be entitled as the prevailing party to recover attorney fees from Plaintiff(s) if I
18 (we) obtain legal services to defend this action pursuant to ORS 90.255.

19 I (we) ask that the Plaintiff(s) not be awarded possession of the premises and that I (we) be
20 awarded my (our) costs and disbursements and attorney fees, if applicable, or prevailing
21 party fee.

Signed: _____ Date: _____
22 (Defendant's name)

23 Defendant's mailing address: _____

24 Defendant's phone number: _____
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I certify that on _____ (date) , I served the foregoing MOTION FOR RELIEF FROM DEFAULT JUDGMENT and DECLARATION IN SUPPORT on:

(landlord's name and address)

By:

First class mail to the above address

By email to the above email address, as agreed by the parties.

Signed: _____
(Name of Defendant)

Date: _____